

Federal ESEA Waivers as Reform Leverage: Politics and Variation in State Implementation

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Under President Obama, over 80 percent of states have received executive approval for waivers from the No Child Left Behind Act in the absence of Congressional reauthorization of the Elementary and Secondary Education Act (ESEA). These comprehensive ESEA waivers have been quite ambitious, in that they were designed to address broad changes in K-12 education in nearly all fifty states and not in response to specific-state concerns or to foster experimentation on a focused set of issues. In reviewing the actual state implementation, we found that the Obama administration has enjoyed substantial success in using the waiver process to leverage states to adopt policy changes. But there are limits, as seen in the difficulties the administration has encountered in leveraging changes in teacher and principal evaluation, and inducing changes in student learning and performance standards. The major obstacles to the accomplishment of administration objectives are internal state political dynamics.

Waivers have served important functions in our intergovernmental policy system. Federal agencies have granted waivers to meet particular political needs and policy objectives with specific constituencies at the state and local level. Waivers also allow for experimentation without having to gain Congressional enactments. In federal education policy, Congress granted broad executive authority over waivers during the Clinton and the Bush years, leading to over six hundred approved waivers in the U.S. Department of Education by the end of 2008.

Under President Obama, over 80 percent of states have received executive approval for waivers from the No Child Left Behind Act (NCLB) in the absence of Congressional reauthorization of the federal Elementary and Secondary Education Act (ESEA). The comprehensive ESEA waivers granted by the Obama administration since 2011 have been quite ambitious, in that they were designed to address broad changes in K-12 in nearly all fifty states and not in response to specific-state concerns or to foster experimentation on a focused set of issues. These waivers occurred due to a unique set of circumstances, including years of legislative failures

to reauthorize ESEA and the Obama Administration's desire to accomplish certain policy objectives not attainable through the legislative process.

In particular, these comprehensive ESEA waivers constituted an administrative approach to address a major problem with NCLB—that many schools would not be meeting NCLB's proficiency standards by 2014—at a time when Congress was incapable of fixing this problem by statute. Turning Congressional inaction into a policy window, the administration issued guidance for waiver requests to accomplish a number of longstanding reform objectives. Waiver states were required to meet these reform expectations to retain their waiver status. Even though federal guidance posed certain political risks in gaining support from various local and state constituencies, state policymakers saw the benefit of not having to be held accountable to the NCLB proficiency standards.

Given the significance of these waivers, federalism scholars may be interested in several issues: To what extent has the Obama administration been able to use the ESEA waiver process to accomplish its policy objectives by steering states to make changes that they would not necessarily have been inclined to make on their own? To what extent has the Obama administration encountered challenges or obstacles in trying to accomplish its reform objectives? What have been the major sources of these challenges and obstacles? And what has been the politics of resolving these federal-state disputes? Given these key research questions, this article examines the policy context of the comprehensive ESEA waivers, assesses the degree to which states have enacted and followed Obama administration expectations, and discusses why the Obama administration has encountered more challenges in certain waiver states than others and considers the political and policy outcome of these disputes that have arisen.

Waiver states have the potential to deliver a wide range of reform in accordance with the administration's guidance. An earlier analysis of waiver applications suggests that these states intended to adopt Common Core standards, use multiple indicators to measure annual student progress, use differentiated actions to intervene to address low performance, and refrain from using school choice or supplemental education services as a key strategy to raise student performance (Riddle 2011). In reviewing the actual implementation across a number of states, we reach a mixed conclusion regarding administration success. The Obama administration has enjoyed substantial success in using the waiver process to leverage states to adopt policy changes. But there are limits, as seen most notably in the difficulties the administration has encountered in leveraging changes in teacher and principal evaluation and inducing changes in student learning and performance standards. As we discuss below, the major obstacles to the accomplishment of

administration objectives are internal-state political dynamics, especially teacher union strength and disagreements among governors, legislators, and state superintendents. These findings are important in part because waivers have increasingly become a key vehicle for policymaking not only regarding education but also regarding health policy and other policy areas, leading scholars to inquire into the degree to which a presidential administration can use the waiver process to achieve policy changes not attainable through Congress.

NCLB Waivers in the Absence of ESEA Reauthorization

The NCLB was enacted into law in January 2002 and it was scheduled to go through the reauthorization process in 2007. Over the last seven years, several failed attempts were made by the Obama administration as well as both parties in Congress to pass a new federal law in elementary and secondary education. There was clearly bipartisan agreement that NCLB's original goal of reaching 100 percent proficiency was unrealistic and unattainable. During its fourteen years of implementation, NCLB has also created tension in the intergovernmental policy system, including unevenness in state content standards and assessment, an absence of student growth measures in the accountability framework, cost concern on the mandate on annual testing, lack of reliable data to track teacher performance, and local resistance to diverse service providers in turning around low performing schools (see e.g., Manna and McGuinn 2013; Hess and Finn 2007; Cohen and Moffitt 2009). The Obama administration attempted to address these implementation problems on a limited scale through various pilot initiatives in specific states and districts, such as the competitive Race to the Top grants, i3 grants, and other federal funding sources to "transform" policy and practices in educator accountability, charter schools, and turning around low-performing schools. These pilots have generally produced some promising results.

Recognizing the limited scale of its pilot initiatives, the Obama administration launched a comprehensive effort on ESEA reauthorization that coincided with the president's 2012 reelection campaign. The administration's February 2012 proposal aimed at maintaining funding for all the major federal K-12 programs, such as Title I, and sending a strong signal on its new priority to promote college and career readiness. Title I, Part A of ESEA, for example, would be renamed as the College- and Career-Ready Students program. The proposal also included competitive grants for early learning and for instruction in science, technology, engineering, and mathematics (STEM). The administration's legislative proposal, however, did not receive much support from the Republican-controlled House of Representatives.

Policy disagreements between the House and Senate and between Republicans and Democrats are so strong on education policy as on other policies that Congress has not been able to pass a reauthorization statute. Instead of working with the administration, legislative leaders from both parties made their own attempts on ESEA reauthorization in the 113th Congress (2013–2014). Political fragmentation, however, precluded enough support for any of these proposals. In the Senate in early June 2013, Democratic Senator Tom Harkin of Iowa introduced a 1,150-page bill (Senate Bill 1094, “Strengthening America’s School Act of 2013”) that retained the key accountability requirements from NCLB, such as annual testing and reporting on all student and subgroup performance (Harkin 2013). The Harkin bill also directed states to implement a teacher-evaluation system that used student achievement data and other measures by 2015–2016. Low performing schools were targeted for state intervention, including turnaround. The Harkin bill made it to the Committee on Health, Education, Labor, and Pensions where it was marked up, amended, and then placed on the Senate Legislative Calendar in October 2013, where it remained.

Not to be overshadowed by the Democratic proposal, Republican Senator Lamar Alexander of Tennessee sponsored Senate Bill 1101, Every Child Ready for College or Career Act of 2013, two days after Senator Harkin’s bill was introduced (Alexander 2013). SB 1101 would reduce federal requirements and allow for great state autonomy on accountability issues. It was referred to the Committee on Health, Education, Labor, and Pensions on the day that it was introduced. The committee did not take any further action during 2014. However, the 2014 midterm election resulted in a Republican majority in the U.S. Senate. Since Senator Alexander became the chair of the committee in January 2015, it is likely that his proposal will receive full consideration in 2015.

The Republican-controlled House of Representatives also responded to Senator Harkin’s proposal with the introduction of House Resolution 5, Student Success Act, in early June 2013. HR 5, sponsored by Republican Representative John Kline of Minnesota, proposed greater state autonomy over the accountability system, although states were required to report on graduation rate, subgroup performance, and annual proficiency in core subjects (Kline 2013). HR 5 would allow states to develop their own intervention strategies in improving low performing schools. It also granted states greater flexibility in using federal funds. Representative Kline’s bill passed the Republican-controlled House with a vote of 221–207. The bill was received by the Senate and sent to the Committee on Health, Education, Labor, and Pensions on July 21, 2013. However, the committee did not take any further action during 2014. Clearly, with a stronger Republican presence in the House beginning in January 2015, Representative Kline’s education bill will likely receive greater Congressional attention.

In the absence of Congressional action on ESEA reauthorization, the U.S. Secretary of Education began to use waivers granted under section 9401 in the NCLB Act to engage states in education reform initiatives. Section 9401 gives the Secretary of Education the authority to “issue waivers of any statutory or regulatory requirement of the ESEA for a state educational agency (SEA), LEA [local educational agency], Indian tribe, or school (through an LEA) that receives funds under an ESEA program and requests a waiver” (U.S. Department of Education 2009). From the states’ perspective, waivers tended to create new opportunities to regain programmatic control, but they also generated a certain sense of uncertainty as many proposed ideas were untested (Bowling and Pickerill 2013). From the Obama administration’s perspective, waivers would address some of the key reform concerns at the state and local level (Gamkhar and Pickerill 2012). Clearly, in liberating states from the need to demonstrate improved proficiency for all students (as previously stipulated in NCLB’s 100 percent proficiency target by 2014), the federal government could solicit political support from states toward adopting more rigorous and uniform standards for college and career readiness, a requirement most easily satisfied by adopting the Common Core standards and assessment. Waivers could also create an incentive for states to implement teacher-evaluation systems that use measureable student outcome data. Seeing the need to balance sanctions and support for low-performing schools, the Obama administration leveraged waivers to incentivize states to implement a comprehensive system of recognition, accountability, and support for all schools. In other words, the Obama administration saw a policy window in the absence of ESEA reauthorization to advance some of its reform priorities. Indeed, a survey of thirty-eight states conducted in fall 2012 suggested a generally favorable view. State respondents believed that the waivers were designed to address problems associated with NCLB accountability; they were also positive about college- and career-ready standards for student learning and recognized the importance of moving toward new teacher-evaluation systems (Center on Education Policy 2013).

ESEA waivers had been issued on a regular basis for several years prior to 2011. The Bush administration, particularly from 2005 to 2008 during Margaret Spellings’s tenure as Secretary of Education, issued various waivers from particular aspects of the NCLB Act. During the Obama administration, Secretary Arne Duncan in 2009 granted waivers to four states to use “growth models” for measuring annual academic progress, signaling a federal response to state complaints on the inflexibility of using NCLB’s Adequate Yearly Progress to report on student proficiency (Congressional Research Service 2011). The Secretary also granted waivers to three states to implement a more differentiated designation of low-performing schools for

accountability purpose. The bulk of the waivers, 196 out of 351 in 2009, were related to local alternative use of federal Title I funds on public school choice and supplemental education services in schools and districts.

The broadening of waiver approval started in 2011 when the Obama administration invited state applications for waivers from meeting the original NCLB goals of attaining 100 percent student proficiency in core subjects by 2014. In the first cycle of applications in November 2011, eleven states formally sought alternative ways to implement their accountability systems in exchange for fulfilling a new set of federal assurances. By early August 2012, thirty-three states and the District of Columbia received federal approval on their NCLB waivers. By the summer of 2014, almost 90 percent of the states have received ESEA waiver approval. More specifically, as of early November 2014, forty-three states and the District of Columbia had been granted waivers and seven states did not have waivers. Of the forty-three waiver states, thirty states and the District of Columbia received an extension on their waiver. Four saw their waiver expired but their renewal applications were under review. The federal government revoked the waiver in two states, namely, Washington and Oklahoma (which later was reinstated). The remaining seven states maintained a current waiver.

Waiver applications were generally in alignment with the priorities of the Obama administration (Riddle 2011). For example, the post-NCLB Nevada system of accountability, which received federal approval in August 2012, planned to use student achievement growth and other measures to differentiate schools that were in need of particular support and intervention. Nevada's state superintendent of public instruction touted the significance of the waiver approval: "This next generation accountability system is a central lever in statewide efforts to substantially elevate student performance. This system was built through robust collaboration with key partners, together with whom we will re-engineer Nevada's educational system to realize true college and career readiness for all students" (Whaley 2012). In other words, waiver states have expressed their intent to implement the Obama administration's reform agenda, such as adopting the Common Core standards. Clearly, a key issue is the extent to which states actually carried out their proposed reform initiatives.

State Variation in Using NCLB Waiver for Reform

Given its focus on institutional reform at the state and local levels, the Obama administration uses NCLB flexibility waiver as an incentive for reform actions. At issue is whether waiver states are meeting the new federal expectations. This study

examines the extent to which waiver states are meeting the key waiver requirements, drawing in part on the state-by-state monitoring reports issued by the U.S. Department of Education. In its report, *ESEA Flexibility Part B Monitoring Plan Summer and Fall 2013*, the U.S. Department of Education provides an assessment of a State Education Agency's (SEA's) implementation of ESEA flexibility in eighteen sets of requirements across four reform areas (U.S. Department of Education, 2014). First, *SEA Systems and Processes* focus on SEA's role to support monitoring, technical assistance, data collection and use, and family and community engagement. Second, *College- and Career-ready Expectations* aim to ensure that SEAs are adopting standards and assessments that allow all students (including English Language Learners) to be prepared for college and careers. Third, *Differentiated Intervention* enables SEAs to implement their own system of differentiated recognition, accountability, and support for all schools, especially low performing "focus" and "priority" schools. Fourth, *Effective Instruction and Leadership* require SEAs to develop and implement fair and thorough evaluations and support systems that provide meaningful feedback regarding teacher and principal effectiveness, including a new teacher and principal evaluation system that draws on student achievement.

To understand state variation on waiver implementation, this study focuses on a sample of sixteen waiver states that represent different levels of student performance and varying degree of political control by the two major parties. These states are Connecticut, Idaho, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, Ohio, Oregon, and Utah. Based on our study, we found that these states made greater progress in meeting some of the federal expectations than others. In our sample of sixteen states, every state met the following four requirements: Develop and Administer Alternate Assessments, Develop and Administer English Language Proficiency Assessments, Adopt English Language Proficiency Standards, and Data Collection & Use. The first three requirements pertain to the reform area of implementing college-and-career-ready standards and assessments for all students. The other expectation met by all sixteen states is Data Collection & Use, which falls under the reform area of SEA Systems and Process. This high level of state implementation suggests that the federal requirement is consistent with state's current practice in compiling and reporting data for accountability purpose. For example, under NCLB, districts and schools are required to report academic proficiency for several subpopulations (Wong 2013). SEAs and LEAs seemed to have developed the capacity to meet this federal requirement on data reporting.

In contrast, fewer of the sixteen states in the sample met several of the other federal expectations. These included: Principal Evaluations and Student Support Systems (with only eight of the sixteen states meeting the expectation), Monitoring (eight states), Teacher Evaluations and Student Support Systems (seven states), and Priority Schools (seven states). Not surprisingly, these expectations often require legislative and gubernatorial involvement in enacting more fundamental changes in current policies and practices. Teachers' union opposition to some of these reform issues also accounted for the lack of progress in half of the sample states. Further, only eight states in our sample were implementing the monitoring requirement. Under this requirement, states had to provide evidence that a state's monitoring process was on track and was resulting in continuous improvement. SEAs had to proceed incrementally with the monitoring function to avoid the local perception on excessive policy intrusion.

Finally, federal requirements on personnel (teacher and principal evaluations and support systems) were among the areas that were met by no more than half of the states in the sample. Decisions revolving around personnel are typically controversial and require legislative action. These challenges seemed to affect states that have different characteristics, including Indiana (a Republican-controlled state), Kentucky (a state with divided governance), and Michigan (a state with unified governance). For example, Indiana, a state with strong Republican control, has received pushback from its Superintendent of Public Instruction, Glenda Ritz. In Indiana, the Superintendent is an elected office, and Ritz, who is a Democrat, has engaged in conflicts on education reform and teacher evaluation with the Republican governor, Mike Pence. In short, our analysis of waiver implementation shows federal success in certain reform areas but political resistance in other areas.

State Politics Shapes NCLB Waiver Implementation

Having shown that the Obama administration has had mixed success in using the waiver process to achieve federal objectives, the next question to be explored is what accounts for why adoption of some of the federal objectives has been more difficult across different states. Drawing on case studies of various states, we discuss plausible explanations regarding this question and make several observations in accounting for state variation. In particular, as will be shown in this section, challenges and controversies have been most significant on account of several factors stemming from internal state politics. First, some challenges stem from teacher-union opposition to changes in teacher and principal evaluation, to the point that in some states teachers' unions have wielded such influence that they

have prevented achievement of federal objectives in these areas. Second, some challenges stem from internal political—and at times partisan—disagreements among state officials, and in a way that has sometimes created challenges for states in meeting federal expectations regarding student learning and performance standards.

Politics of Reforming Teacher Evaluation

The administration's waiver requirement on reforming teacher evaluation has encountered significant state resistance. Not surprisingly, teachers' unions were the most outspoken opponents of this requirement. At the same time, the politics of opposition took on a different character in different states. As discussed below, Louisiana and Washington saw strong union opposition, while California's objection involved a broader set of state stakeholders. Even in Maryland, a state that met practically all the waiver requirements, state leaders had to struggle to find ways to accommodate the new teacher evaluation requirement.

Gubernatorial controversy in Louisiana

Louisiana Governor Bobby Jindal, in office since 2008, has pursued various education reform initiatives that have caused controversy with the teachers' unions and other educator organizations over the years. One of his most recent endeavors, in 2013, was a statewide school voucher program. However, the Louisiana Supreme Court struck down Jindal's plan, in a case brought to court by the American Federation of Teachers, the Louisiana School Boards Association, and the Louisiana Association of Teachers (*Washington Times* 2013). At the same time, the governor and the teachers' association engaged in heated debate on teacher evaluation. Jindal's view was clear. According to a news report, the governor was quoted as saying, "In my own state what we have is the teachers' union, the Louisiana Association of Educators saying, 'we're for evaluating teachers as long as you don't link it so closely to student achievement'" (Alpert 2012). Jindal then commented, "That's ridiculous" (Alpert 2012).

The ongoing conflict between teachers' union and the governor was fueled by broader education reform in the state. Since Hurricane Katrina, Louisiana has been faced with insurmountable challenges, most notably rebuilding its education system. The Republican-controlled Louisiana General Assembly created the Recovery School District (RSD) and granted RSD the authority to bypass union agreements and takeover low-performing schools from multiple districts, especially public schools in New Orleans. The rebuilding of the education system has led to a significant growth of charter schools that are managed by diverse providers,

including for-profit entities (Levin et al. 2010). Most importantly, RSD was granted the power to replace tenured teachers. Moving toward a new teacher-evaluation system would further weaken the bargaining power of the teachers' union. Seeing a steady decline in their influence, teachers' union saw the waiver request an opportunity to openly challenge the governor's position on teacher evaluation.

Legislative delays in Maryland

During 2013–2014, Maryland's Democratic Governor Martin O'Malley was a strong supporter of the Obama administration's education policy. The state met sixteen of the eighteen flexibility waiver elements and had two elements subject to federal review. The Part B Monitoring Report points out how successful Maryland has been in meeting the expectations stated in its waiver request. For example, the Maryland State Department of Education (MSDE) implemented thorough processes, provided extensive support for implementation of processes and plans, and closely monitored its priority schools. In addition, the MSDE had several activities to support and foster the implementation of college and career ready standards and assessments in the state's curriculum. Furthermore, the MSDE carefully reviewed focus school plans and supported implementation through their "Focus School Network."

However, the MSDE had two elements under review by the U.S. Department of Education: Teacher & Principal Evaluation and Support Systems. The ESEA flexibility waiver and the Race to the Top grant given to Maryland have created a complicated timeline for teacher evaluation. With strong support from the teachers' union, the state legislature passed a bill in April that would delay the use of test scores in teacher evaluation until 2016–2017. Due to concerns from the governor on this legislation, the Maryland General Assembly decided to pursue a one-year request for waiver extension. By enacting an emergency bill titled "Education - Evaluation of Teachers and Principals - Implementation Timeline" (see Maryland General Assembly 2014), Maryland was granted a waiver extension for one year in July 2014. During the extension year, Maryland was required to work closely with the U.S. Department of Education to address the standards and methods in their teacher-evaluation system. As *Education Week* states, "Maryland has run into some difficulties in the teacher evaluation area. Still, it's the very first original Race to the Top state to get a waiver extension" (Klein 2014d).

Rejection and approval in California

Since President Obama's announcement declaring that states could apply for the ESEA waiver in 2011, California has had a unique experience with the flexibility

initiative. In December 2012, the U.S. Department of Education denied the State of California's ESEA waiver request. California and Iowa were the two states to have been denied waivers (Johnson 2012). The president of the State Board of Education in California commented on the federal rejection, "California's unwillingness to tie teacher evaluations to student test scores was what sank the state's request" (Johnson 2012). Recognizing the concerns expressed by teachers and their union leaders, Governor Jerry Brown and State School Superintendent Tom Torlakson did not want to use standardized test data as the key component of a statewide teacher-evaluation system. Superintendent Torlakson reacted, "It is disappointing that our state's request—which enjoyed so much strong support from parents, teachers, administrators, and education advocates across California—has apparently been rejected" (Johnson 2012). Although disappointed, California's state leaders were not surprised by the rejection because federal officials had warned them that California's waiver would be rejected if the state was unwilling to alter its teacher-evaluation system to conform to federal waiver principles.

While rejecting the state waiver application, the U.S. Department of Education granted ESEA waivers to eight districts in California in August 2013, in what U.S. News education reporter Allie Bidwell (2013) called a "first-of-its-kind waiver." The eight districts that received waivers—Los Angeles, San Francisco, Long Beach, Fresno, Oakland, Sacramento, Santa Ana, and Sanger—collectively serve over one million students. As part of a multi-district collaborative not associated with the state department, known as California Office to Reform Education (CORE), the eight districts submitted a joint waiver request. In exchange for the waivers, each district agreed to implement a system of college and career standards to ensure all students are ready, adopt the Common Core standards and assessment, allocate funding to the neediest students, and improve the effectiveness in teaching and leadership (U.S. Department of Education 2013). CORE districts also focused on a new teacher-evaluation system, which included test scores and other academic performance, school culture and climate, and social and emotional measures. Commenting on this unique, district-based, waiver approval, U.S. Education Secretary Arne Duncan stated: "The districts' approved plan includes key accountability components that when implemented will surpass the rigor of the current NCLB system and provide an opportunity to expand innovative interventions and practices that can improve student achievement, rather than spending time and resources implementing NCLB's one-size-fits-all mandates" (U.S. Department of Education 2013).

Local teachers' unions and legislators conveyed their discontent with granting waivers to eight districts out of fear that "the move will set a risky precedent for

other districts” (Bidwell 2013). Additionally, the president of the California Teachers Association expressed his concern that “the CORE waiver distracts from the good work already in progress by local educators across the state” (Bidwell 2013).

Disapproval in Washington

On April 14, 2014, Washington officially became the first state to lose its ESEA waiver, which had allowed Washington to receive a break from NCLB’s testing requirements. In 2011, Secretary of Education Arne Duncan awarded flexibility waivers to Washington and other states to allow them the chance to make “rigorous and comprehensive plans for improving learning for all students, closing achievement gaps, increasing equity and improving the quality of instruction” without the pressure of meeting the deadline of having every child at 100 percent proficiency by 2014 (Blankinship 2014a). Since then, four states have been categorized as in danger of getting their waivers revoked: Washington, Oregon, Kansas, and Arizona (Blankinship 2014a). However, Washington is the only state that lost its waiver and continues to be subjected to the previously existing NCLB Act requirements.

The main reason behind Washington’s flexibility waiver loss was its refusal to alter its teacher-evaluation system. In his letter to Washington Superintendent of Public Instruction Randy Dorn, Secretary Duncan wrote:

One of the commitments that Washington — and every State that received ESEA flexibility — made was to put in place teacher and principal evaluation and support systems that take into account information on student learning growth based on high-quality college- and career-ready (CCR) State assessments as a significant factor in determining teacher and principal performance levels, along with other measures of professional practice such as classroom observations (Duncan 2014).

After two years of operating on a conditional waiver, Duncan finally broke the news to Washington state officials that their waiver was no longer operative (Blankinship 2014a). However, Duncan told them that they could have their waiver back whenever they wanted as long as they altered their teacher-evaluation system to include student achievement on statewide assessments as a factor to evaluate teachers.

The federal action did not surprise state officials due to the political tension that has been brewing ever since the state received the waiver approval. There was intense political tension among the state legislature, federal government, and the

Washington Education Association. According to local observers, the state teacher's union and lawmakers on both sides of the aisle said the federal government was "asking too much" by mandating that Washington include student performance in teacher evaluations (Blankinship 2014a). However, the parties could not agree on a solution to the teacher evaluation debate that would allow the state to keep its waiver. The Republican chair of the Senate Education Committee blamed the state's largest teachers union for opposing changes to the teacher-evaluation system. "This was easily avoidable," said Sen. Steve Litzow, R-Mercer Island (Blankinship 2014b). Superintendent Dorn disagreed with the unions and the Washington State Legislature's decision. The Superintendent planned to continue his lobbying in the state Legislature to change state's teacher-evaluation system.

The implications of Washington's loss of its federal waiver are far reaching. Governor Jay Inslee was concerned that federal disapproval would lead to teacher layoffs and cuts in programs that support struggling Title I students (Blankinship 2014a). With Washington's waiver revoked, school districts were expected to lose control over nearly \$40 million in federal in Title I money for disadvantaged students. Title I schools would have to set aside some of their Title I money for "NCLB-prescribed remedies for low-performing schools, such as tutoring and school choice" (Klein 2014b). For the next legislative session, State Superintendent Dorn hoped that the house and senate will change the teacher-evaluation system and take a stand against the teacher's union position and for Democrats and Republicans to work together to come up with a teacher evaluation standard that meets the federal requirements. Dorn believes the "situation may be different next session if lawmakers are able to attach some sort of financial sweeteners to a legislative change" (Klein 2014b).

During March 2015, legislative efforts focused on Senate Bill 5748, which would allow districts and their teachers' unions to negotiate how to include test scores in their teacher-evaluation system beginning in 2016–2017. If this bill gains political support and is ultimately enacted into law, this policy development in Washington will serve as the latest example of how the Obama administration has succeeded in using waiver as reform leverage. Adoption of a new teacher-evaluation system following the federal waiver withdrawal would suggest the influence of waiver in redirecting state preference in a key policy domain.

Politics of Adopting Common Core of Academic Standards

In a number of waiver states, the principal challenge the Obama administration has encountered stems from political disagreements within a state's political system. These disagreements were illuminated by the debates on whether to adopt the

Common Core standards on academic content and student assessment. Between 2011 and 2014, an increasing number of states introduced legislation that challenged the Common Core standards (Jochim and Lavery 2015). By the end of 2014, only eight states did not introduce legislative challenges. At issue is the politics of state control over education affairs, as suggested in the following discussion of Indiana and Oklahoma.

Political Tension in Indiana

Since taking office in 2013, Republican Governor Mike Pence's legislative agenda revolved around job creation and the economy in Indiana. However, in 2014, Governor Pence shifted his legislative focus to education, particularly early childhood education, by implementing a statewide Pre-K voucher system. Pence is also a supporter of merit-based pay for teachers (State Impact 2014). Not surprisingly, Pence has faced difficulties with Superintendent of Public Instruction Glenda Ritz (a Democrat). The major source of friction between the governor and the superintendent revolves around Pence's plan to create a new education agency to support his workforce development plans, which threatened Ritz with a potential loss of power (State Impact 2014). Additionally, Ritz, a Democrat, has to work with a state board of education that was mostly appointed by Pence, a Republican.

The political conflict between the governor and the superintendent appears to have slowed down the implementation of key elements in the ESEA waiver. Indiana met expectations for nine elements of the ESEA waiver but has not met expectations for the other nine elements. Although it has not been officially labeled a high-risk state, Indiana received a letter from the U.S. Department of Education stating that conditions have been placed on its waiver (Klein 2014c). According to the Part B Monitoring Report, Indiana has failed to meet the expectations of some of the most critical elements, which pertain to student achievement and personnel accountability. For example, Indiana lacked a process of monitoring college-and-career-ready standards and a system to review and monitor implement of LEAs teacher and principal evaluation systems.

Superintendent Ritz and Governor Pence have been involved in a high-stakes situation regarding Indiana's teacher-evaluation system. Under its ESEA waiver, Indiana is required to implement a new state wide standardized test for K-12 students to maintain its waiver. Superintendent Ritz had requested the State Board of Education "to suspend for a year the state's school rating system and the use of test scores in teacher evaluations, because student test scores are expected to plummet since the new test is dramatically different from the current exam" (Weddle et al. 2014). The Superintendent and the state department argued that

they lacked the authority to require the implementation of a new evaluation system because current law gives personnel decisions to school districts and that legislative action would be needed. Despite these concerns, observers pointed out, “Gov. Mike Pence has no intention of freezing accountability for teachers and schools next year” (Weddle et al. 2014). Indeed, if Indiana does not meet the requirements of its federal waiver, the state might lose control of \$200 million a year in federal education funding (Weddle et al. 2014). Recognizing the funding implication, Governor Pence reiterated his commitment to implementing ESEA waiver requirements in a letter to the U.S. Secretary of Education: “Together with top Indiana House and Senate leaders, our state is dedicated to preserving strong accountability in our state. We do not support a pause in accountability as it relates to delivering A-F grades to schools, determining intervention strategies in underperforming schools, or teacher evaluations that reflect classroom performance” (Weddle et al. 2014). In other words, the governor intervened in this case to avoid federal restrictions on state control over the use of federal funding.

A more salient issue in Indiana pertains to federal pressure on state implementation of college-and-career-ready standards and intervening in priority schools. Indiana has not developed or conveyed various support materials to educators for students with disabilities in the context of the new standards. Indiana has also failed to develop and administer high-quality assessments on college and career readiness. At the time Indiana was approved for its ESEA waiver, Indiana was a core member of Partnership for Assessment of Readiness for College and Careers (PARCC); however, the Indiana General Assembly voted to leave PARCC in March 2014 and passed a law that enables the state to use its own statewide assessment, the Indiana Statewide Testing for Educational Progress Plus Assessment (ISTEP Plus) for the 2014–2015 school year (Klein 2014c). The state’s departure from PARCC prompted an extensive federal review and raised the uncertainty about the future of its ESEA waiver. Following an extensive review, the federal government was satisfied with the state assessment standards in meeting the waiver expectation. Indiana’s waiver was finally renewed in August 2014. The renewal in Indiana shows a state’s ability to maintain control over core education issues while accommodating federal influence in shaping education priority.

Repealing and reinstating Oklahoma

Oklahoma became the second state to lose its NCLB flexibility waiver shortly after Governor Mary Fallin signed legislation to reject the Common Core standards and adopt the state’s own academic standards. In signing House Bill 3399 on June 5, 2014, Governor Fallin formally shifted from being a vocal supporter of the

Partnership for Assessment for Readiness in College (PARCC) to a prominent promoter of state control over academic standards. The state was an early supporter of PARCC in 2010.

Running for her second term as a Republican governor in 2014 put Mary Fallin in a politically difficult position on the issue of Common Core. Governor Fallin and the Republican state-schools Superintendent Janet Barresi were early supporters of the Common Core, an issue favored by the business community. However, many Republican state legislators voiced their concerns about federal intrusion. Others expressed caution on the gathering of individual student information by the federal government and other out-of-state organizations. This policy division began in fall 2013 when the state house held hearings on Common Core and focused on several problems regarding federal intrusion and individual student privacy. In response to these concerns, Governor Fallin signaled her concerns about federal influence by issuing an executive order in early December 2013 to guard against possible federal intrusion in the state's academic and student affairs.

Within the state Republican leadership, Common Core became increasingly contentious during the spring legislative session in March 2014, when an earlier version of House Bill 3399 rejecting Common Core gained overwhelming support from sixty-five of the seventy-two House Republicans (Krehbiel 2014). House Democrats were also evenly split on this issue, as Common Core standards were seen as an unfunded mandate. The Senate, however, was not ready to advance the bill in large part due to opposition from the Senate Education Committee Chair John Ford, a Republican who served as a former executive in a major oil and energy company. In the next few weeks, Republican legislative support for abandoning the Common Core became a reality. House Bill 3399 was passed by seventy-eight to twelve in the House and by thirty-seven to ten in the Senate. The Governor signed the bill in early June 2014.

As the momentum against the Common Core escalated throughout the campaign season, Governor Fallin decided to side with the majority of the Republican state legislators by early summer 2014. In signing House Bill 3399, Fallin took away a divisive issue that could have weakened her Republican electoral base. Her Democratic opponent, state representative Joe Dorman, frequently challenged her credibility by using the Common Core as an example. Dorman, a conservative Democrat, characterized Fallin as flip-flopping her position on the Common Core that ultimately led to federal repeal of the state waiver. The contentious nature of Common Core was illustrated by the defeat of Republican state-schools superintendent, an early supporter of Common Core, in the Republican primary in June (Green 2014; Willert 2014). Governor Fallin's switch

on the Common Core was a contributing factor to gaining strong Republican support in her bid for a second term.

A week following Governor Fallin's signing House Bill 3399 into law to repeal Common Core standards, Assistant Secretary of the U.S. Department of Education Deborah S. Delisle provided the reasons that the new legislation failed to meet the federal waiver requirements (Delisle 2014). First, House Bill 3399 reversed the state commitment to Common Core and the federal government required the state to provide evidence that the state-designed standards meet the college- and career-ready standards that justified for ESEA flexibility. Second, the state was asked to show that the state's higher education institutions certify these new standards and the students would not need remedial coursework at the postsecondary level. Third, the state was required to develop and administer annual high-quality assessments in core subject areas in grades three through eight and once in high school.

Oklahoma's waiver was formally revoked in late August 2014. Upon hearing the decision from the U.S. Department of Education, Governor Fallin complained, "It is outrageous that President Obama and Washington bureaucrats are trying to dictate how Oklahoma schools spend education dollars. Because of overwhelming opposition from Oklahoma parents and voters to Common Core, Washington is now acting to punish us." (Emma 2014) Clearly, Oklahoma was not deterred by these federal warnings. Upon learning that the State Regents for Higher Education approved the new standards, the state schools superintendent filed a 139-page request for reinstating its waiver with the U.S. Department of Education on October 21. Following federal-state negotiation, Oklahoma's ESEA waiver was reinstated in late November 2014. Like Indiana, Oklahoma did not give up in pushing for its own state standards instead of adopting the Common Core. Both Indiana and Oklahoma suggest an interesting mix of federal influence and state persistence in resolving the intergovernmental tension over decisions on state standards.

Conclusion: Waiver in the Absence of ESEA Reauthorization

When U.S. Secretary Arne Duncan started the process of approving states for comprehensive ESEA waivers in 2011, there were still some hopeful signs that the Congress intended to reauthorize the ESEA. Now that the ESEA reauthorization is several years overdue and the prospect of legislative action remains uncertain prior to the next presidential election in 2016, ESEA waivers fill an important policy gap. In the absence of ESEA reauthorization, waivers have become the de facto federal education reform agenda.

Because of the importance of ESEA waivers in the context of Congressional inaction, our findings on state implementation have broad policy implications. First, of the eighteen requirements, only a few of them are met by most states. In contrast, federal provisions that require fundamental departure from current policies and practices tend to face more implementation difficulties. For example, no more than half of the states in our sample were able to institute evaluation systems for teachers and principals. Clearly, federal removal of waivers from Washington and from Oklahoma (whose waiver was later reinstated) sent a strong message to other states regarding two of the top federal policy priorities, namely basing teacher evaluation on outcome measures and adopting externally certified academic content and assessment standards. When Oklahoma's statewide elected officials in both the legislative and executive branches made the decision to replace the Common Core with state-designed standards, the federal government took immediate action to revoke the waiver. Following federal-state negotiation, Oklahoma waiver was reinstated. In both Washington and Oklahoma, state legislative politics contributed to a seemingly abrupt stop to intergovernmental negotiation over reform priorities. At the same time, the fact that there were only a handful of states that did not gain waiver approval and only one state waiver was formally revoked suggests that the administration recognizes the limits of exercising direct authority in a policy domain under state constitutional responsibility. Because federal leverage is not unlimited, pressuring and incentivizing states toward certain reform goals remains an appropriate reform path for the Obama administration.

After the November 2014 elections, the growing dominance of Republicans in state legislatures and the rise of new Republican governors have created a new political reality for the Obama administration in terms of waiver negotiation. To engage state support for education reform, the U. S. Department of Education will now have to reassess its use of carrot and stick, to lengthen the pace in which states are expected to meet the federal requirements, and to allow for even greater policy discretion at the state level.

Granting regulatory flexibility may be a sufficient incentive for reform only in some states. In several of our case-study states, waiver implementation became entangled in internal state politics. The difficulty of adopting personnel evaluation systems is an indication of political tension between those who deliver the services (namely, unions that represent teachers and principals) and those who side with the consumers and constituencies (namely, the elected officials). Even in Maryland, a state that was strongly supportive of the administration's education policy, state leaders needed more time to work through legislative negotiations over the

teacher-evaluation system. The federal government may need to take additional steps to leverage a broad political coalition in support of this type of controversial reform at the state level. The federal government may also identify those elements that are more complex, both technically and politically, and provide waiver states with more time and more targeted technical assistance.

Further, in analyzing the state-by-state monitoring reports issued by the federal government, we see information on implementation that may be helpful to a broader set of stakeholders. Currently, administrative stakeholders, such as superintendents and federal officials, are the primary users of the federal monitoring reports. If the information is more widely distributed to parents, community members, and teachers, the waiver monitoring report cards can broaden public engagement to facilitate stronger reform implementation.

Finally, the 2014 election and advent of Republican control of the U.S. Senate along with the election of several new Republican governors have implications for congressional debates about ESEA reauthorization. Newly elected Republican governors may forge a policy alliance with their Republican U.S. Senators to advance their alternative views on state autonomy over academic standards, contracting with diverse providers, and evaluation for teachers and principals. In other words, intergovernmental negotiation over ESEA reauthorization will be shaped by the new political reality at both the federal and the state level. Clearly, education federalism will remain a contested terrain.

Notes

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